

QUILEUTE INDIAN TRIBE,
Appellant

v.

PORTLAND AREA DIRECTOR,
BUREAU OF INDIAN AFFAIRS,
Appellee

: Order Docketing and Dismissing
: Appeal
:
:
: Docket No. IBIA 99-93-A
:
:
: September 8, 1999

On August 16, 1999, the Board received, by transmittal from the Office of Trust Responsibilities, Bureau of Indian Affairs (BIA), a notice of appeal dated June 28, 1999, from the Quileute Indian Tribe. The notice of appeal, although addressed "Board of Indian Appeals," was not mailed to the Board's address but to the address for the Department of the Interior in Washington, D.C. The notice did not enclose a copy of the decision appealed. Nor did it identify the BIA official who issued the decision or provide the date of the decision. The Board therefore ordered Appellant to furnish a copy of the decision it sought to appeal.

The copy was received by the Board on September 3, 1999. It shows that a decision under 25 C.F.R. Part 900 was issued on June 2, 1999, by the Portland Area Director, BIA. In that decision, the Area Director declined a proposed Indian Self-Determination Act (ISDA) contract, which Appellant had sought for the purpose of conducting an Unresolved Hunting and Fishing Rights Project. The copy of the decision furnished by Appellant bears a date stamp showing that Appellant received it on June 7, 1999.

The Area Director's decision included the appeal information required by 25 C.F.R. § 900.152. It stated that appeals were to be filed with the Board of Indian Appeals within 30 days of receipt of the decision. Specifically, as concerns this appeal, it provided the Board's correct mailing address, stating that an appeal "shall be filed with the IBIA by certified mail or by hand delivery at the following address: Board of Indian Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, VA 22203." The Board's mailing address is also provided in 25 C.F.R. §§ 900.152 and 900.158(b), concerning the filing of ISDA appeals.

Appellant did not follow the Area Director's instructions insofar as they specified the address to which a notice of appeal was to be mailed.

The Board has held that a notice of appeal under 25 C.F.R. Part 2 is not timely when an appellant is given correct appeal instructions but fails to follow them, resulting in receipt of the notice of appeal by the Board outside the time period specified in the regulations. E.g., Charlie v. Navajo Area Director, 30 IBIA 302, recon. denied, 31 IBIA 35 (1997).

In this case, the notice of appeal was filed under 25 C.F.R. Part 900, rather than 25 C.F.R. Part 2. As noted, it was addressed to the Board but mailed to the main Interior building in Washington, D.C. It appears that Interior mailroom employees, undoubtedly unaccustomed to handling mail addressed to the Board, routed it to BIA, where it was received in BIA's Office of Trust Responsibilities on July 8, 1999, but not forwarded to the Board until August 16, 1999.

The Interior mailroom should have forwarded the notice of appeal directly to the Board and, failing that, BIA's Office of Trust Responsibilities should have transmitted the notice to the Board more promptly than it did. However, an appellant which fails to follow appeal instructions bears the risk of delays in transmitting its notice of appeal to the Board. Reeves v. Anadarko Area Director, 25 IBIA 40, 41 n.1 (1993).

The ISDA appeal regulations in 25 C.F.R. Part 900 contemplate that ISDA appeals will be handled expeditiously and, with this end in mind, place strict time limits on this Board, on the Department's Administrative Law Judges and, in the case of appeals concerning the Indian Health Service, on the Appeals Board of the Department of Health and Human Services. While government officials thus bear much of the responsibility for prompt resolution of ISDA appeals, the regulations place responsibility for the timely initiation of an appeal squarely on the appellant.

An appellant's responsibility for filing a timely notice of appeal under 25 C.F.R. § 900.158(a) includes responsibility for filing the notice in accordance with the deciding official's appeal instructions, when those instructions are consistent with 25 C.F.R. § 900.152. As in the case of appeals filed under 25 C.F.R. Part 2, a notice of appeal filed under 25 C.F.R. § 900.158(a) is not timely when an appellant is given correct appeal instructions but fails to follow them, resulting in receipt of the notice of appeal by the Board outside the time period specified in the regulations.

Appellant has failed to file a timely notice of appeal. Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1 and 25 C.F.R. Part 900, this appeal is docketed but is dismissed as untimely.

Anita Vogt
Administrative Judge

Kathryn A. Lynn
Chief Administrative Judge